

GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2010 REGULAR SESSION

HOUSE BILL NO. 297

WEDNESDAY, FEBRUARY 10, 2010

The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED
DATE March 30, 2010
4:06pm

TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Heller

AN ACT relating to nonprofit motor vehicle dealers.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS 190.010 TO 190.080 IS CREATED
TO READ AS FOLLOWS:

(1) A nonprofit organization, prior to engaging in the business of a nonprofit motor vehicle dealer, shall obtain a nonprofit motor vehicle dealer license from the commission.

(2) A nonprofit motor vehicle dealer, and persons who act as salespersons for a nonprofit motor vehicle dealer shall be licensed and regulated by the commission under the provisions of this chapter, except that a nonprofit motor vehicle dealer shall not be required to:

(a) Comply with the provisions of subsection (7) of Section 3 of this Act; or

(b) Comply with the provisions of Section 4 of this Act.

(3) A nonprofit motor vehicle dealer may sell vehicles only to:

(a) A person who is a client of the nonprofit organization;

(b) A person referred by other nonprofit organizations or governmental agencies who meets the definition of client as defined in Section 2 of this Act; or

(c) A licensed motor vehicle dealer or automotive recycling dealer.

(4) The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish requirements for initial application for and renewal of a license to be a nonprofit motor vehicle dealer and standards for disability and disadvantaging condition. In addition, the commission may promulgate additional administrative regulations that are necessary to implement this section.

➔Section 2. KRS 190.010 is amended to read as follows:

As used in this chapter[KRS 190.010 to 190.990]:

1 (1) "Manufacturer" means any person, partnership, firm, association, corporation, or
2 trust, resident or nonresident, who manufactures or assembles new motor vehicles,
3 or imports for distribution through distributors of new motor vehicles, or any
4 partnership, firm, association, joint venture, corporation, or trust, resident or
5 nonresident, which is controlled by the manufacturer. Additionally, the term
6 "manufacturer" shall include the following terms:

7 (a) "Distributor" which means any person, firm, association, corporation, or trust,
8 resident or nonresident, who in whole or in part offers for sale, sells, or
9 distributes any new motor vehicle to new motor vehicle dealers, or who
10 maintains factory representatives, or who controls any person, firm,
11 association, corporation, or trust, resident or nonresident, who in whole or in
12 part offers for sale, sells, or distributes any new motor vehicle to new motor
13 vehicle dealers;

14 (b) "Factory branch" which means a branch office maintained by a manufacturer
15 for the purpose of selling, or offering for sale, new motor vehicles to a
16 distributor, wholesaler, or new motor vehicle dealer, or for directing or
17 supervising, in whole or in part, factory or distributor representatives, and
18 shall further include any sales promotion organization, whether the same be a
19 person, firm, or corporation, which is engaged in promoting the sale of new
20 motor vehicles in this state of a particular brand or make to new motor vehicle
21 dealers;

22 (c) "Factory representative" which means a representative employed by a
23 manufacturer, distributor, or factory branch for the purpose of making or
24 promoting for the sale of his, its, or their new motor vehicles, or for
25 supervising or contracting with his, its, or their dealers, or prospective dealers;

26 (d) "Distributor branch" which means a branch office similarly maintained by a
27 distributor or wholesaler for the same purposes; and

- 1 (e) "Distributor representative" which means a representative similarly employed
2 by a distributor, distributor branch, or wholesaler;
- 3 (2) "Motor vehicle dealer" means any person not excluded by subsection (3) of this
4 section, engaged in the business of selling, offering to sell, soliciting, or advertising
5 the same, of new or used motor vehicles, or possessing motor vehicles for the
6 purpose of resale, either on his own account, or on behalf of another, either as his
7 primary business or incidental thereto;
- 8 (3) The term "motor vehicle dealer" shall not include:
- 9 (a) Receivers, trustees, administrators, executors, guardians, or other persons
10 appointed by or acting under the judgment or order of any court, and any bank,
11 trust company, or lending institution that is subject to state or federal
12 regulation, with regard to its disposition of repossessed motor vehicles;
- 13 (b) Public officers while performing their official duties; or
- 14 (c) Employees of persons enumerated in paragraphs (a) and (b) of this subsection,
15 when engaged in the specific performance of their duties as employees;
- 16 (4) "New motor vehicle dealer" means a vehicle dealer who holds a valid sales and
17 service agreement, franchise, or contract, granted by the manufacturer, distributor,
18 or wholesaler for the sale of the manufacturer's new motor vehicles;
- 19 (5) "New motor vehicle dealership facility" means an established place of business
20 which is being used or will be used primarily for the purpose of selling, buying,
21 displaying, repairing, and servicing motor vehicles;
- 22 (6) "Used motor vehicle dealer" means any person engaged in the business of selling at
23 retail, displaying, offering for sale, or dealing in used motor vehicles, but shall not
24 mean any person engaged in the business of dismantling, salvaging, or rebuilding
25 motor vehicles by means of using used parts, or any public officer performing his
26 official duties;
- 27 (7) "Motor vehicle leasing dealer" means any person engaged in the business of

- 1 regularly making available, offering to make available, or arranging for another
 2 person to use a motor vehicle pursuant to a bailment, lease, or other contractual
 3 arrangement under which a charge is made for its use at a periodic rate for at least a
 4 monthly term, and title to the motor vehicle is in a person other than the user, but
 5 shall not mean a manufacturer or its affiliate leasing to its employees or to dealers;
- 6 (8) "Restricted motor vehicle dealer" means a motor vehicle dealer who exclusively
 7 sells, offers to sell, solicits, or advertises specialized motor vehicles including, but
 8 not limited to, funeral coaches, emergency vehicles, and an automotive recycling
 9 dealer engaged in the business of dismantling, salvaging, or recycling salvage motor
 10 vehicles for the purpose of harvesting used parts, components, assemblies, and
 11 recyclable materials for resale, reuse, or reclamation;
- 12 (9) "Motorcycle dealer" means a motor vehicle dealer who exclusively sells, offers to
 13 sell, solicits, or advertises motorcycles, including alternative-speed motorcycles as
 14 defined in KRS 186.010. Motorcycles shall not include mopeds as defined in this
 15 section;
- 16 (10) "Motor vehicle salesperson~~salesman~~" means any person who is employed as a
 17 salesperson~~salesman~~ by a motor vehicle dealer to sell motor vehicles, or who is
 18 employed as an auctioneer by a motor vehicle auction dealer to sell motor vehicles
 19 at auction;
- 20 (11) "Motor vehicle auction dealer" means any person primarily engaged in the business
 21 of offering, negotiating, or attempting to negotiate a sale, purchase, or exchange of a
 22 motor vehicle through auction;
- 23 (12) "Motor vehicle" means every vehicle intended primarily for use and operation on
 24 the public highways that is self-propelled including low-speed motor vehicles as
 25 defined in KRS 186.010, but shall not include farm tractors and other machines and
 26 tools used in the production, harvesting, and care of farm products;
- 27 (13) "New motor vehicle" means a vehicle that is in the possession of the manufacturer,

- 1 distributor, or wholesaler, or has been sold to the holders of a valid sales and service
 2 agreement, franchise, or contract, granted by the manufacturer, distributor, or
 3 wholesaler for the sale of the make of new vehicle, which is new, and on which the
 4 original title has not been issued from the franchised dealer;
- 5 (14) "Moped" means a motorized bicycle with pedals whose frame design may include
 6 one (1) or more horizontal crossbars supporting a fuel tank, or a motorized bicycle
 7 with pedals and with a step through type frame rated no more than two (2) brake
 8 horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an
 9 automatic transmission not requiring clutching or shifting by the operator after the
 10 drive system is engaged, and capable of a maximum speed of not more than thirty
 11 (30) miles per hour;
- 12 (15) "Commission" means the Motor Vehicle Commission;
- 13 (16) "Commissioner" means the commissioner of the department;
- 14 (17) "Department" means the Department of Vehicle Regulation;
- 15 (18) "Licensor" means the commission;
- 16 (19) "Established place of business" means a permanent, enclosed commercial building
 17 located within this state, easily accessible and open to the public at all reasonable
 18 times, and at which the business of a vehicle dealer, including the display and repair
 19 of vehicles, may be lawfully carried on in accordance with the terms of all
 20 applicable building codes, zoning, and other land use regulatory ordinances;
- 21 (20) "Person" means a person, partnership, firm, corporation, association, trust, estate, or
 22 other legal entity;
- 23 (21) "Franchise" means the agreement or contract between any new motor vehicle
 24 manufacturer, written or otherwise, and any new motor vehicle dealer that purports
 25 to fix the legal rights and liabilities of the parties to an agreement or contract, and
 26 pursuant to which the dealer purchases and resells the franchise product;
- 27 (22) "Good faith" means honesty in fact, and the observance of reasonable commercial

1 standards of fair dealing in the trade, as is defined and interpreted in KRS 355.2-
2 103(1)(b);

3 (23) "Designated family member" means the spouse, child, grandchild, parent, brother,
4 or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the
5 dealer's ownership interest in the dealership under the terms of the dealer's will; or
6 who has otherwise been designated in writing by a deceased dealer to succeed him
7 in the motor vehicle dealership; or who, under the laws of intestate succession of
8 this state is entitled to inherit the interest; or who, in the case of an incapacitated
9 dealer, has been appointed by a court as the legal representative of the dealer's
10 property. The term includes the appointed and qualified personal representative and
11 testamentary trustee of a deceased dealer;

12 (24) "Fraud" means a misrepresentation in any manner, whether intentionally false or
13 due to gross negligence, of a material fact; a promise or representation not made in
14 good faith; or an intentional failure to disclose material fact;

15 (25) "Sale" means the issuance, transfer, agreement for transfer, exchange, lease, pledge,
16 hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of
17 any motor vehicle or interest in it, or of any franchise related to it, as well as any
18 option, subscription, other contract, or solicitation looking to a sale, offer to attempt
19 to sell in any form, whether spoken or written. A gift or delivery of any motor
20 vehicle or franchise with respect thereto, with or as a bonus on account of the sale
21 of anything, shall be deemed a sale of the motor vehicle or franchise;

22 (26) "Automotive mobility dealer" means any motor vehicle dealer who:

23 (a) Exclusively engages in the business of selling, offering to sell, or soliciting or
24 advertising the sale of adapted vehicles;

25 (b) Possesses adapted vehicles exclusively for the purpose of resale, either on his
26 or her own account or on behalf of another, as his or her primary business or
27 incidental thereto; or

1 (c) Engages in the business of selling, installing, or servicing; offering to sell,
 2 install, or service; or soliciting or advertising the sale, installation, or servicing
 3 of equipment or modifications specifically designed to facilitate use or
 4 operation of a motor vehicle by an aging or disabled person;

5 (27) "Adapted vehicle" means a new or used motor vehicle especially designed or
 6 modified for use by an aging or disabled person; ~~and~~

7 (28) "Mobility equipment" means equipment specifically designed to facilitate the use of
 8 a motor vehicle by an aging or disabled person;

9 (29) "Nonprofit motor vehicle dealer" means a nonprofit organization exempt from
 10 taxation under Section 501(c)(3) of the Internal Revenue Code that purchases
 11 motor vehicles that it may offer for purchase to clients and other individuals who
 12 meet the definition of client as defined in this section and who are referred to the
 13 organization by public or private social service agencies; and

14 (30) "Client" means a person who has an open case file with a nonprofit organization
 15 or governmental agency and who meets the standards for disability or
 16 disadvantaging condition as established in administrative regulations
 17 promulgated by the commission pursuant to subsection (4) of Section 1 of this
 18 Act.

19 ➔ Section 3. KRS 190.030 is amended to read as follows:

20 (1) A motor vehicle dealer, new, used, or auction motor vehicle dealer, nonprofit
 21 motor vehicle dealer, motor vehicle leasing dealer, restricted motor vehicle dealer,
 22 motorcycle dealer, broker, wholesaler, automotive recycling dealer, or a salesperson
 23 of motor vehicles shall not engage in business in this state at any location without a
 24 license issued for that location as provided in KRS 190.010 to 190.080. If a person
 25 acts as a motor vehicle salesperson, he shall secure a motor vehicle salesperson's
 26 license in addition to a license for a motor vehicle dealer. The motor vehicle
 27 commission may provide by administrative regulation for other licensee activities

1 and an appropriate fee.

2 (2) A manufacturer of motor vehicles, factory branch, distributor, distributor branch, or
3 wholesaler shall not engage in business in this state without a license as provided in
4 KRS 190.010 to 190.080.

5 (3) A factory representative or distributor representative shall not engage in business in
6 this state without a license as provided in KRS 190.010 to 190.080.

7 (4) Application for license shall be made to the licensor, at a time, in a form, and
8 containing information the licensor shall require and shall be accompanied by the
9 required fee. The licensor may require in the application, or otherwise, information
10 relating to the applicant's solvency, his financial standing, or other pertinent matter
11 commensurate with the safeguarding of the public interest in the locality in which
12 the applicant proposes to engage in business. The information may be considered by
13 the licensor in determining the fitness of the applicant to engage in business as set
14 forth in this section.

15 (5) All licenses shall be granted or refused within thirty (30) days after submission of a
16 complete application and shall expire, unless revoked or suspended, on December
17 31 of the calendar year for which they are granted. If a complaint of unfair
18 cancellation of dealer franchise is in the process of being heard, a replacement
19 application for the franchise shall not be considered until a decision is rendered by
20 the commission.

21 (6) The license fee for a calendar year, or part thereof, shall be as follows:

22 (a) For new motor vehicle dealers, one hundred dollars (\$100) for each office or
23 branch or agent thereof, plus one hundred dollars (\$100) for a supplemental
24 license for each used car lot not immediately adjacent to the office or to a
25 branch;

26 (b) For used motor vehicle dealers, one hundred dollars (\$100) for each office or
27 branch or agent thereof;

- 1 (c) For motor vehicle leasing dealers, one hundred dollars (\$100) for each office
- 2 or branch or agent thereof;
- 3 (d) For restricted motor vehicle dealers, one hundred dollars (\$100) for each
- 4 office or branch or agent thereof;
- 5 (e) For motorcycle dealers, one hundred dollars (\$100) for each office, branch, or
- 6 agent thereof;
- 7 (f) For motor vehicle manufacturers, one hundred dollars (\$100); and for each
- 8 factory branch in this state, one hundred dollars (\$100);
- 9 (g) For distributors, motor vehicle auction dealers or wholesalers, the same as for
- 10 dealers;
- 11 (h) For motor vehicle salespersons, twenty dollars (\$20), to be paid by the
- 12 licensed dealer for every salesperson the dealer employs;
- 13 (i) For factory representatives, or distributor branch representatives, one hundred
- 14 dollars (\$100);~~[-and]~~
- 15 (j) For automotive mobility dealers, one hundred dollars (\$100);
- 16 **(k) For nonprofit motor vehicle dealers, one hundred dollars (\$100); and**
- 17 **(l) For nonprofit motor vehicle dealer salespersons, a license fee shall not be**
- 18 **imposed.**
- 19 (7) The licenses of dealers, manufacturers, factory branches, distributors, and
- 20 distributor branches shall specify the location of the office or branch and shall be
- 21 conspicuously displayed there. If the location is changed, the licensor shall endorse
- 22 the change of location on the license. A licensee shall not be charged a fee for
- 23 changing locations. A change of location shall require a new application. A licensee
- 24 may conduct a temporary sale or display if the temporary sale or display is
- 25 permitted under an enabling ordinance enacted by the city, county, urban-county, or
- 26 consolidated local government within whose boundaries the temporary sale or
- 27 display is to be conducted. A temporary sale or display shall be advertised as

1 temporary in nature and shall consist of a representative sampling of the inventory
 2 of each participating licensee. *The provisions of this subsection shall not apply to*
 3 *a nonprofit motor vehicle dealer.*

4 (8) Every salesperson, factory representative, or distributor representative shall carry
 5 his license when engaged in business, and display it upon request. The license shall
 6 name his employer; and in case of a change of employer, the salesperson shall
 7 immediately mail his license to the licensor who shall endorse the change on the
 8 license without charge.

9 (9) If the licensor has reasonable cause to doubt the financial responsibility or the
 10 compliance by the applicant or licensee with the provisions of this statute, the
 11 licensor may require the applicant or licensee to furnish and maintain a bond in a
 12 form, amount and with sureties not less than fifteen thousand dollars (\$15,000),
 13 conditioned upon the applicant or licensee complying with the provisions of the
 14 statutes applicable to the licensee. The bonds shall be executed in the name of the
 15 State of Kentucky for the benefit of any aggrieved parties, but the penalty of the
 16 bond shall not be invoked except after a court adjudication. The commission may
 17 promulgate administrative regulations to permit the applicant to submit evidence, in
 18 lieu of posting bond, that reliable financial arrangements, deposits, or commitments
 19 exist providing assurance, substantially equivalent to that afforded by a bond
 20 complying with this subsection, for payment on conditions and indemnity set forth
 21 in this subsection. The bonding requirements of this subsection shall not apply to
 22 manufacturers, factory branches, and their agents.

23 (10) Application for dealer's license shall be submitted to the commission and contain
 24 information the commission may require. A motor vehicle dealer, unless licensed
 25 under KRS 190.010 to 190.080, shall not be permitted to register, receive, or use
 26 any motor vehicle registration plates.

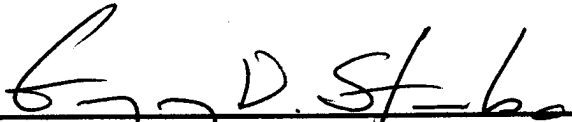
27 (11) Every motor vehicle dealer licensed in accordance with the provisions of this

1 section shall make reports to the licensor at intervals and show information the
2 licensor may require.

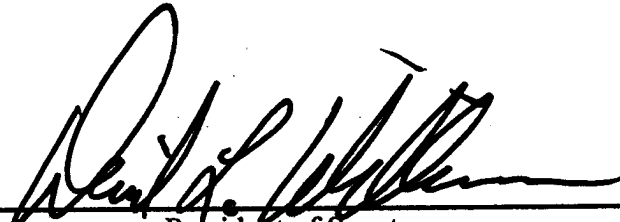
3 ➔ Section 4. KRS 190.035 is amended to read as follows:

4 **(1) Except as provided in subsection (2) of this section, a~~[No]~~ license shall not be**
5 issued by the commission for the purposes described in KRS 190.030(1) and to
6 motor vehicle dealers, either as dealer or salesman, unless the applicant for the
7 license has an established place of business as defined in KRS 190.010, and as
8 provided by regulation of the commission consistent with the activity of the license
9 applied for. A licensee may conduct more than one (1) business in a building
10 otherwise meeting the requirements of this chapter providing he has suitable space
11 and adequate facilities therein to properly conduct the business of a motor vehicle
12 dealer. The lot requirement of this section may be waived if the dealer has sufficient
13 space within a building to properly show and display the motor vehicles being sold
14 by him. The dealer shall display a sign easily visible from the street identifying his
15 business.


16 **(2) The provisions of this section shall not apply to a nonprofit motor vehicle dealer.**



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date March 30, 2010